

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT JOSEPH MCCARTY,
Plaintiff,
v.
JOHN V. ROOS, et al.,
Defendants.

2:11-CV-1538 JCM (NJK)

ORDER

Presently before the court is *pro se* plaintiff Robert Joseph McCarty's motion for a preliminary injunction. (Doc. # 231). Defendants filed a response in opposition (doc. # 232), and plaintiff filed a reply (doc. # 233).

In this case, plaintiff Robert Joseph McCarty asserts numerous claims against defendants based on his registration as a sex offender in Nevada. Plaintiff argues that he was denied due process when he was convicted of a sex crime in Japan, and thus it violates several of his constitutional rights to require him to register as a sex offender in the United States.

In the instant motion, plaintiff requests that the court enjoin defendants from enforcing the registration provisions of Nev. Rev. Stat. 179D.490, which would alter his status to that of a tier-two sex offender, thereby increasing the length of his registration to twenty-five years.

Liberally construing plaintiff's motion in consideration of his status as a *pro se* litigant, plaintiff argues that the reclassification of his tier status based on Nev. Rev. Stat 179D.490 is the equivalent of an unconstitutional *ex post facto* law.

1 Further, plaintiff argues that his conviction of a sex crime in Japan took place without due
 2 process, and therefore defendants should be enjoined from classifying him as a sex-offender in
 3 Nevada.

4 **I. Legal standard**

5 The Supreme Court has stated that courts must consider the following factors in determining
 6 whether to issue a preliminary injunction: (1) likelihood of irreparable injury if preliminary relief is
 7 not granted; (2) a likelihood of success on the merits; (3) balance of hardships; and (4) advancement
 8 of the public interest. *Winter v. Natural Res. Def. Council, Inc*, 555 U.S. 7, 20 (2008). “An injunction
 9 is a matter of equitable discretion” and is “an extraordinary remedy that may only be awarded upon
 10 a clear showing that the plaintiff is entitled to such relief.” *Id.* at 22, 32. A moving party is required
 11 to make a showing that all of these requirements have been met. *American Trucking Assoc. v. City*
 12 *of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

13 **II. Discussion**

14 The court finds that a preliminary injunction is not appropriate in this case because plaintiff
 15 fails to show that he is likely to succeed on the merits of his claims.

16 As to plaintiff’s first contention, the Ninth Circuit recently held that the expanded registration
 17 provisions of Nev. Rev. Stat 179D.490 did not violate the Ex Post Facto or Due Process Clauses of
 18 the Constitution. *See Am. Civil Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1053, 1060 (9th
 19 Cir. 2012). Therefore plaintiff’s argument is devoid of legal merit and lacks any probability of
 20 success.

21 Plaintiff’s second contention, that defendants are violating his due process rights by forcing
 22 him to register as a sex offender based on a wrongful conviction, similarly lacks probability of
 23 success. Nev. Rev. Stat. 179D.097(s) requires individuals convicted of sexual offenses in other
 24 jurisdictions to be registered as sex offenders within forty-eight hours after arriving or establishing
 25 residence in Nevada.

26 The Sex Offender Registration and Notification Act (“SORNA”) provides “[a] foreign
 27 conviction is not a sex offense . . . if it was not obtained with sufficient safeguards for fundamental

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1 fairness and due process for the accused under guidelines or regulations established under section
 2 16912 of this title.” 42 U.S.C. § 16911(5)(B). The “guidelines” referred to are the SORNA
 3 Guidelines issued by the attorney general, which adopted the following standards with respect to
 4 foreign convictions:

5 Sex offense convictions under the laws of any foreign country are
 6 deemed to have been obtained with sufficient safeguards for
 7 fundamental fairness and due process if the U.S. State Department,
 8 in its Country Reports on Human Rights Practices, has concluded that
 9 an independent judiciary generally (or vigorously) enforced the right
 to a fair trial in that country during the year in which the conviction
 occurred. Registration must be required on the basis of such
 convictions on the same footing as domestic convictions.

10 Office of the Attorney General, The National Guidelines for Sex Offender Registration and
 11 Notification, 73 FR 38030, 38050-51 (July 2, 2008).

12 The State Department Country Reports for Japan in 2002 and 2003 found that the Japanese
 13 government “generally respected in practice the constitutional provisions for the right to a speedy
 14 and public trial by an impartial tribunal in all criminal cases.” U.S. Department of State, County
 15 Reports on Human Rights (March 31, 2003), *available at* <http://www.state.gov/j/drl/rls/hrrpt/2002/18246.htm>; U.S. Department of State, County Reports on
 16 Human Rights (February 25, 2004), *available at* <http://www.state.gov/j/drl/rls/hrrpt/2003/27772.htm>.

17 Notably, plaintiff does not dispute that he was convicted of a sexual offense in Japan, but
 18 contests the procedures that led to his conviction. Plaintiff was convicted of the crime of “quasi
 19 indecent assault.” The indictment stated that plaintiff told three high school girls, his students, “to
 20 change into his clothes and lie on the bed for massage, made them mistakenly believe what he said
 21 and kept them from resisting him, then he stroked or touched their breasts and private parts with his
 22 hands for pleasure, thus he committed indecency on them, respectively, on a number of occasions.”
 23 (Doc. # 227 p. 15).

24 Plaintiff fails to show that the crime of which he was convicted would not constitute a sexual
 25 offense if it had been committed in Nevada. Furthermore, plaintiff provides only unsupported
 26 allegations that violations of his rights took place which lead to the conviction. Therefore, the court
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1 finds that plaintiff lacks a probability of success on the merits of his claims, and plaintiff's motion
2 for a preliminary injunction will be denied.

3 **III. Conclusion**

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that *pro se* plaintiff Robert
6 Joseph McCarty's motion for a preliminary injunction (doc. # 231) be, and the same hereby is,
7 DENIED.

8 DATED April 8, 2014.

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10 **UNITED STATES DISTRICT JUDGE**
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